

MEMORANDUM OPINION

*(bench opinion)*

August 16, 2006

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION

IN RE:

JACKIE LYNN REYES  
a/k/a JACLYN HOUSTON

Debtor

:  
:  
:  
:  
:  
:

Case No. 06-31589  
Chapter 13

BEFORE THE HONORABLE RICHARD STAIR, JR.

UNITED STATES BANKRUPTCY JUDGE

1                   THE COURT: This matter came on for hearing today, August 16, 2006, on  
2                   my Order entered on July 27, 2006, directing the Debtor to appear and show cause why  
3                   her bankruptcy case should not be dismissed for her failure to obtain the consumer  
4                   credit counseling briefing required by 11 U.S.C. § 109(h)(1). For the reasons  
5                   hereinafter discussed, this bankruptcy case will be dismissed. The court has no  
6                   discretion on the credit counseling briefing issue.

7                   The Debtor, acting *pro se*, filed the Voluntary Petition commencing her  
8                   Chapter 13 case on July 24, 2006. On the second page of her petition, under the section  
9                   entitled "Certification Concerning Debt Counseling by Individual/Joint Debtor(s),"  
10                  Ms. Reyes was required to check one of two boxes. The first box is adjacent to the  
11                  following certification: "I/we have received approved budget and credit counseling  
12                  during the 180-day period preceding the filing of this petition." Underneath the first  
13                  box is a second box, which is adjacent to this certification: "I/we request a waiver of  
14                  the requirement to obtain budget and credit counseling prior to filing based on exigent  
15                  circumstances. (Must attach certification describing.)" Ms. Reyes checked the second  
16                  box, i.e., the box requesting a waiver of the consumer credit counseling requirement  
17                  based on "exigent circumstances."

18                  The Debtor also filed on July 24, 2006, a document entitled "Certification of  
19                  Exigent Circumstances and Request for Waiver of Briefing From Credit Counseling  
20                  Agency" in which she elaborates, to a great extent, on litigation she has pending in the  
21                  United States District Court in Mississippi. Specifically, however, she states, among  
22                  other things, that she is filing "an emergency Chapter 13 Petition to cause her property  
23                  to be held by the United States Trustee for this District pending resolution of legal  
24                  issues, to prevent even further loss by the United States Department of the Treasury in  
25                  the form of fines, and penalties, resulting from the unlawful activity of non law abiding

1 creditors and other entities[.]”

2 She then goes on to state that for these and other reasons set forth in the  
3 certification, “time did not allow for a briefing by a consumer credit agency. And  
4 considering the circumstances, the Debtor submits that it is not necessary in this case.”

5 Ms. Reyes attached to the certification she filed with her petition copies of  
6 the following documents:

7 (1) an Amended Complaint for Injunctive Relief, Damages, and Related  
8 Relief that she filed on April 4, 2005, against BankPlus, and some eighteen other  
9 defendants, including officers of BankPlus, the Debtor’s former bankruptcy attorney,  
10 and other property owners, in the United States District Court for the Southern District  
11 of Mississippi, alleging violations of the Bank Holding Company Act, violations of the  
12 Sherman Antitrust Act, securities fraud, common law fraud and deceit, violations of the  
13 Fair Housing Act, civil rights violations, violations of the Violent Crime Control and  
14 Law Enforcement Act of 1994, gender discrimination, conversion, breach of fiduciary  
15 duty, intentional infliction of emotional distress, defamation, fraudulent conveyance,  
16 and violations of Mississippi securities laws, and seeking damages totaling more than  
17 \$10,750,000,000.00, and an injunction prohibiting the defendants from conspiring  
18 against her and harassing her;

19 (2) a Motion by Plaintiff to Add United States Government as Party  
20 Plaintiff filed in the Mississippi District Court action on February 16, 2006;

21 (3) a Motion to Order Clerk to Comply With Federal Rules of Civil  
22 Procedure filed in the Mississippi District Court on January 15, 2006; and

23 (4) an Order entered by a magistrate judge on January 21, 2006, in the  
24 Mississippi District Court litigation granting her motion to proceed *in forma pauperis*  
25 and consolidating matters for trial.

1 Under the Bankruptcy Abuse Prevention and Consumer Protection Act of  
2 2005, in order to be eligible to file bankruptcy under any chapter of title 11, an  
3 individual debtor must participate in a pre-petition credit counseling briefing.  
4 Specifically, 11 U.S.C. § 109(h)(1) provides as follows:

5 Subject to paragraphs (2) and (3), and notwithstanding any other  
6 provision of this section, an individual may not be a debtor under  
7 this title unless such individual has, during the 180-day period  
8 preceding the date of filing of the petition by such individual,  
9 received from an approved nonprofit budget and credit  
10 counseling agency described in section 111(a) an individual or  
11 group briefing (including a briefing conducted by telephone or on  
12 the Internet) that outlined the opportunities for available credit  
13 counseling and assisted such individual in performing a related  
14 budget analysis.

15 This requirement may be temporarily waived, however, pursuant to  
16 11 U.S.C. § 109(h)(3)(A) if the debtor files a certification that:

- 17 (i) describes exigent circumstances that merit a waiver of the  
18 requirements of paragraph (1);  
19 (ii) states that the debtor requested credit counseling services  
20 from an approved nonprofit budget and credit counseling agency,  
21 but was unable to obtain the services referred to in paragraph (1)  
22 during the 5-day period beginning on the date on which the  
23 debtor made that request; and  
24 (iii) is satisfactory to the court.

25 Pursuant to 11 U.S.C. § 109(h)(3)(B), the exemption under § 109(h)(3)(A)

1 “shall cease to apply . . . on the date on which the debtor meets the requirements of  
2 paragraph (1), but in no case may the exemption apply . . . after the date that is 30 days  
3 after the debtor files a petition, except that the court, for cause, may order an additional  
4 15 days.”

5 Additionally, 11 U.S.C. § 109(h)(4) provides that debtors may be excused  
6 from the counseling requirement altogether in the event of the following:

7 The requirements of paragraph (1) shall not apply with respect to  
8 a debtor whom the court determines, after notice and hearing, is  
9 unable to complete those requirements because of incapacity,  
10 disability, or active military duty in a military combat zone. For  
11 the purposes of this paragraph, incapacity means that the debtor  
12 is impaired by reason of mental illness or mental deficiency so  
13 that he is incapable of realizing and making rational decisions  
14 with respect to his financial responsibilities; and ‘disability’  
15 means that the debtor is so physically impaired as to be unable,  
16 after reasonable effort, to participate in an in person, telephone,  
17 or Internet briefing required under paragraph (1).

18 Within the Sixth Circuit, courts addressing this eligibility issue are in  
19 agreement that the statute says what it means and means what it says, thus requiring all  
20 three components of the § 109(h)(3)(A) requirements to be satisfied if the debtor is to  
21 qualify for the exigent circumstances objection. *See, e.g., In re Burrell*, 339 B.R. 664,  
22 666-67 (Bankr. W.D. Mich. 2006); *In re Graham*, 336 B.R. 292, 296-97 (Bankr. W.D.  
23 Ky. 2005); *In re Fields*, 337 B.R. 173, 179-80 (Bankr. E.D. Tenn. 2005); *In re Cleaver*,  
24 333 B.R. 430, 434-35 (Bankr. S.D. Ohio 2005).

25 “[A]s long as the statutory scheme is coherent and consistent, there generally

1 is no need for a court to inquire beyond the plain language of the statute.” *United States*  
2 *v. Ron Pair Enters., Inc.*, 109 S. Ct. 1026, 1030 (1989). “When the words of a statute  
3 are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”  
4 *Conn. Nat’l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992) (quoting *Rubin v. United*  
5 *States*, 101 S. Ct. 698, 701 (1981)).

6 The language of § 109(h)(1) is plain and unambiguous: “an individual may  
7 not be a debtor under [title 11] unless [he or she] has, [within 180 days preceding the  
8 filing date],” received a consumer credit counseling briefing from an approved credit  
9 counseling agency. There is no mistaking the ordinary, plain meaning that any  
10 individual filing a petition under any chapter of the Bankruptcy Code must either  
11 (1) participate in a consumer credit counseling briefing prior to filing, or (2) certify to  
12 the court that they were unable to meet this requirement prior to filing due to exigent  
13 circumstances.

14 Likewise, the method for obtaining a waiver of the pre-petition consumer  
15 credit counseling requirement is expressly and specifically set forth by the statute.  
16 Section 109(h)(3)(A) states that any debtor requesting a waiver must file a certification  
17 with the court, providing the following necessary elements, which must be satisfactory  
18 to the court:

19 (1) a description of the exigent circumstances meriting the waiver; and  
20 (2) a statement that the debtor actually “requested credit counseling services  
21 from an approved . . . agency,” but he or she was “unable to obtain the services referred  
22 to in paragraph (1)” of § 109(h) because the agency was unable to provide the debtor  
23 with counseling within five days of the request.

24 Based upon the plain language of the statute, the court has absolutely no discretion with  
25 respect to the consumer credit counseling requirement. *See Fields*, 337 B.R. at 180

1 (“Based upon the plain language of the statute, the court has no discretion with respect  
2 to the consumer credit counseling requirement.”); *Cleaver*, 333 B.R. at 433 (“The  
3 statute is unequivocal and allows for no other excuse or exception.”). It cannot be  
4 waived unless the requirements of § 109(h)(4) are met, i.e., the individual is  
5 incapacitated or disabled, as defined by the statute, or is actively serving in the military  
6 in a combat zone.

7 In summary, the 11 U.S.C. § 109(h)(1) credit counseling briefing  
8 requirements must be performed pre-petition unless exigent circumstances prevent the  
9 debtor from obtaining the counseling, the debtor has actually made an attempt to obtain  
10 counseling but could not obtain it within five days of making the request, these facts are  
11 certified to the court, and the court finds the explanations satisfactory. As noted, even if  
12 the exigent circumstances exemption applies, § 109(h)(3)(B) provides that it only  
13 applies for thirty days unless the court, for cause, grants another fifteen-day exemption.  
14 This means a debtor must meet the § 109(h)(1) credit counseling briefing requirements  
15 during that thirty-day post-petition period.

16 In this case, the Debtor did not satisfy the requirements of § 109(h)(3)(A),  
17 nor is she excepted from the briefing by virtue of § 109(h)(4). The Debtor filed a  
18 certification; however, it does not contain a statement that she attempted to obtain credit  
19 counseling pre-petition but could not do so within five days after making a request, nor  
20 does it contain facts to support that the Debtor was faced with exigent circumstances  
21 justifying a waiver of the pre-petition credit counseling requirement. None of the  
22 statements contained in the certification or the documents attached thereto evidence the  
23 type of emergency situation necessary to constitute exigent circumstances under the  
24 statute. Moreover, the Debtor is clearly not currently in active military service in a  
25 combat zone, nor is she incapacitated or disabled, as those terms are defined under

Accordingly, the court has no discretion but to dismiss this bankruptcy case, and an appropriate order to that effect will be entered. I will ask the court reporter to transcribe this opinion in order that the Debtor might have a full explanation as to why I am required to dismiss her case, even though, for reasons unbeknownst to me, she did not appear at the hearing after appropriate notice.

8 /s/ RICHARD STAIR, JR.  
 9 RICHARD STAIR, JR.  
 U.S. BANKRUPTCY JUDGE